July, 1968 by reason of the provisions of Order 64, rule 11, so that he was entitled to bring in his cross-appeal not later than 18th July. I regret that I cannot accept that argument. There would be substance in that argument only if all the documents in relation to this appeal were required to be filed in the Registry of the High Court at Malacca. I must therefore hold that the notice of cross-appeal by the respondent was filed and served out of time, with the result that the cross-appeal is not properly before this court. However, as this would appear to be the first time that this point has been argued, and in view of the peculiar circumstances of this appeal, I would extend the time until 18th July, 1968 for the filing and service of the notice of cross-appeal, so that both the appeal and the cross-appeal can be proceeded with.

Azmi L.P. and Suffian F.J. concurred.

Order accordingly.

Solicitors: *Sault, Keith Sellar & Co.; Allen, Gledhill & Ball.*

SOO KUA v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) September 26, 1969]
[Malacca — Criminal Appeal No. 25 of 1968]

Internal Security — Detention — Extension of period of — Direction of Yang di-Pertuan Agong — How signified — Validity of order issued by Minister — Internal Security Act, 1960, ss. 8(1), (1A) & 44.

The appellant was convicted under section 44 of the Internal Security Act, 1960 for breach of a condition of an order made by the Minister of Internal Affairs. It appeared that the order purported to be made by the Minister was "in exercise of the powers conferred upon me by section 8(1A) of the Internal Security Act, 1960".

Held, allowing the appeal: an order for the extension of a period of detention under section 8(1A) of the Internal Security Act can only be made in the discretion of the Yang di-Pertuan Agong and as the order in this case was not an order made by or at the direction of the Yang di-Pertuan Agong it was not an effective order.

Case referred to:—

(1) *Lim Hock Siew & Ors.* v. *The Minister of the Interior & Defence* [1968] 2 M.L.J. 219.

MAGISTRATE'S CRIMINAL APPEAL

V. Manuel for the appellant.

Hassan bin Ishak (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Sharma J.: The accused was charged under section 44 of the Internal Security Act 1960 for having committed a breach of one of the conditions of the order made by the Menteri Hal Ehwal Dalam Negeri* on the 22nd day of December 1966. The condition of the order the breach which was relied upon by the prosecution reads as follows:—

"That he shall reside and remain within the area of Jasin Police District and shall not leave or move out of Jasin Police District without the prior permission in writing of the officer in charge of Jasin Police District."

On the 3rd day of June, 1967 the accused was found walking in the town of Malacca and was arrested. He was convicted and sentenced to pay a fine of $400 or in default to undergo an imprisonment for 2 months. Against that order he has appealed. The only ground of appeal which has any substance is that the order made by the Minister is invalid.

Tht Minister as defined in the Internal Security Act 1960 (hereinafter referred to as the Act) is the Minister charged with responsibility for internal security.

Section 8(1) of the Act as far as is relevant provides as follows:—

"If the Yang di-Pertuan Agong is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of public order or essential services therein, it is necessary so to do, the Minister shall make an order:

(a) directing that such person be detained for any period not exceeding two years; or

(b) for all or any of the following puposes, that is to say:

(i) for imposing upon that person such restrictions as may be specified in the order in respect of his activities and the places of his residence and employment; .....

(v) for prohibiting him from travelling beyond the limits of the Federation or any part thereof specified in the order except in accordance with permission given to him by such authority or person as may be specified in such order:

and any order made under paragraph (b) of this subsection shall be for such period, not exceeding two years, as may be specified therein, and may by such order be required to be supported by a bond."

Under section 8(1) of the Act the Minister *is required* to make an order if the Yang di-Pertuan Agong is satisfied with the desirability of preventing a person or persons from acting in any manner prejudicial to the security of the country. The Minister is also under this section required to make the order if the Yang di-Pertuan Agong becomes satisfied that either the interests of public order or the maintenance of essential services warrant or indicate such an action.

Section 8(1) of the Act contemplates two steps or processes. The first is that the Yang di-Pertuan Agong has to be satisfied in the

* Minister of Internal Affairs.

context of section 8(1) that a particular person is to be prevented from acting in any manner which may be prejudicial to the security of the country or he is to be so prevented for the maintenance of public order or essential services in the country. The formation of the opinion about detention or imposition of restriction on any individual rests with the Yang di-Pertuan Agong. It is his satisfaction that section 8(1) speaks of. The second step or process under section 8(1) of the Act is the making of the order by the Minister. It follows from the first step and once the requirements of the first process are fulfilled the second process is mandatory on the Minister and follows as of course. The Minister's duties under section 8(1) seem only administrative or quasi-administrative. The Minister has no doubt his choice under sub-section (1) of section 8 as to the nature and extent of the restriction which he may wish to impose.

Under section 8(1A) of the Act:—

"The Yang di-Pertuan Agong may direct that the period of any order made under sub-section (1) be extended for a further period or periods not exceeding two years at a time."

Whereas section 8(1) provides for the making of the original detention or restriction order, section 8(1A) relates to an extension or further extensions of the order made under section 8(1). Such extension can only be at the direction of the Yang di-Pertuan Agong.

According to the evidence in this case the restrictions placed upon the accused "lapsed in December 1966". There is no evidence as to the exact time when the order made under section 8(1)(b) of the Act lapsed. All that P.W.1 said was:—

"I know accused. He is Soh Peng Choon who is restricted to Merlimau. He was sent from Johore to Merlimau since September 1966. His restriction lapsed in December 1966. His restriction was renewed in December 1966. This is the extension of the order — P1."

Exhibit P1 has the following heading:—

"INTERNAL SECURITY ACT, 1960
EXTENSION OF RESTRICTIVE ORDER
Section 8(1A)"

It is thus obvious that the Minister was purporting to act under section 8(1A) of the Act. The evidence produced by the prosecution itself was that the original order made under section 8(1) of the Act had lapsed.

Article 5(1) of the Constitution provides:—

"No person shall be deprived of his life or personal liberty save in accordance with law."

Article 5 has, of course, to be read in the context of the provisions of article 149(1) of the Constitution but that does not imply that there should not be any strict adherence to and due compliance with the provisions of the Internal Security Act 1960.

The material part of the order made by the Minister is, for convenience, reproduced here:—

"To the Inspector General of Police, Royal Malaysian Police, all other police officers, and all others whom it may concern.

WHEREAS the Yang di-Pertuan Agong is satisfied with respect of the undermentioned persons that with a view to preventing that person from acting in a manner prejudicial to the security of MALAYSIA/the maintenance of public order therein/the maintenance of essential services therein, it is necessary to make the following order:

Now therefore, in exercise of the powers conferred on me by section 8(1A) of the Internal Security Act 1960, I hereby order that the undermentioned person shall be subjected to the following conditions for further period of two years from the date of this order."

The Minister has expressly stated in the order that he was making the order in exercise of the powers conferred upon him by section 8(1A) of the Internal Security Act 1960. He could act under section 8(1A) of the Act if so directed by the Yang di-Pertuan Agong. There is nothing in the order itself which says that he was so directed and there was no other evidence produced by the prosecution which could suggest that there was such a direction. It was urged by the learned deputy that under the provisions of section 14 of the Delegation of Powers Ordinance 1956 the direction under section 8(1A) of the Act could be signified under the hand of the Minister. There could be no dispute about that. The question, however, is where does one find the evidence to that effect? In the third paragraph of the order (P1) the Minister in very unambiguous terms states "Now therefore, *in exercise of the powers conferred* upon me by section 8(1A) ..... I hereby order ..... for *further period* of two years *from the date of this order.*" (The emphasis is mine). A direction from the Yang di-Pertuan Agong is a pre-requisite to any extension of the period of detention or restriction. Furthermore, an extension of the period of detention or restriction implies and signifies prolongation of the original period of detention or restriction. It only enlarges or gives further duration to the existing period. It does not revive any order which might already have expired. If the original period of detention or restriction had already expired that period could not be extended or prolonged by an order under section 8(1A) of the Act. Section 8(1A) of the Act expressly uses the words " ..... extended for a *further period* ....." What is intended is a continuation of the period of detention or restriction beyond the period stated in the original order made under section 8(1). The validity of the order made under section 8(1) of the Act is for a limited period. At the expiry of that period the order cannot be made use of unless it has been extended under section 8(1A) and if it has not been so extended all restraints on the liberty of the subject are *ipso facto* removed.

The order discharges itself by effluxion of time. The order becomes bereft of its validity, force and effectiveness at the end of the period specified in the order. It is then otiose. There is, however, no bar to another order being made by the Minister under section 8(1) of the Act if the Yang di Pertuan Agong is at the time of the making of the new order still satisfied of the various grounds and matters referred to in section 8(1) of the Act. The fact, however, remains that the order made by the Minister on the 22nd day of December 1966 was not an order made under section 8(1) of the Act. It might have been so made but it does not say so. Under those circumstances I cannot come to any finding other than what the order itself purports to show i.e. that it was made under section 8(1A) of the Act.

Section 8(1) and 8(1A) of our Act are the same as sections 8(1) and 8(1A) of the Singapore Internal Security Act 1960. In dealing with the case of *Lim Hock Siew & Ors. v. The Minister of the Interior & Defence.*[1] Wee Chong Jin C.J. said:—

"Under the Act, a person can only be detained initially for a period not exceeding two years, if the President is satisfied with respect to that person ..... Once the President is so satisfied then section 8(1)(a) requires the Minister charged with the responsibility for internal security to make an order directing that such person be detained accordingly. The making of an order of detention in respect of a person by the Minister under section 8(1)(a) is in my opinion merely the performance of an administrative function in compliance with an executive decision of the President that it is necessary to direct that the person be detained.

Next, section 8(1A) gives powers to continue the detention of a person detained under an order of detention after the expiration of the period of detention specified in the initial detention order, by giving the President the power to direct that the period of any order made under section 8(1)(a) be extended for a further period or periods not exceeding two years at a time. In clear and simple language the legislature has thus entrusted the power to continue the detention of a detainee to the President and not to the Minister and this is clearly in conformity with the power vested in the President alone by the legislature by section 8(1)(a) to retain a person in the first place.

In what manner then must the President make known to a detainee that he, the President, is directing that the period of his detention is extended for a further period of time? In my opinion, either by the President making the direction under his own hand or in accordance with the provisions of section 34 of the Interpretation Act 1965 ....."

The order (P1) made by the Minister is, according to its own tenor, not an order made by or at the direction of the Yang di-Pertuan Agong and is consequently not an effective order under section 8(1A) of the Act. The appeal is allowed and the order of the magistrate is set aside. Fine, if paid by the appellant, is to be refunded to him.

Appeal allowed.

Solicitors: *Lawrence, Joseph & Manuel.*

Re Estate of LEE PENG SAN, DECD. LAI YONG TIAM & ORS. v. YONG YUN CHOW & ORS.

[O.C.J. (Sharma J.) September 26, 1969]

[Malacca — Originating Summons No. 18 of 1969]

Executors and Administrators — Administration bond — Application for assignment of — Evidence that condition of bond has been broken — Probate and Administration Ordinance, 1959, ss. 35 & 37 — Probate and Administration Rules, 1961.

In this case an application was made for the assignment of the administration bond executed by the administratrices of the estate. The breach alleged by the plaintiffs was that the administratrices had sold a piece of land belonging to the estate for less than its assessed value. The administratrices had however obtained leave of the court for the sale.

Held: there was no *prima facie* evidence in this case of any breach of the conditions of the bond and therefore the application must be dismissed.

Cases referred to:—

(1) *In the Goods of Young* (1866) L.R. 1 P. & D. 186, 188.

(2) *Davey* v. *Edwards & Tappen* 162 E.R. 406 (408).

(3) *Baker & Marshman* v. *Brooks and Marshman* v. *Hughes* 164 E.R. 1183.

(4) *Dabendra Nath Dutt* v. *Administrator General of Bengal* I.L.R. 33 Cal. 713.

ORIGINATING SUMMONS

A.C. Vohrah for the plaintiffs.

S.C. Navaratnam for the 3rd and 4th defendants.

Cur. Adv. Vult.

Sharma J.: One Lee Peng San died on the 13th day of January 1964 and letters of administration to his estate were granted to his two widows Yong Yun Chow and Ng Ah Kheng who are the first and second defendants respectively in this originating summons. The net value of the estate of the deceased was assessed at $32,868.92 by the Collector of Estate Duty. On the 23rd day of March, 1965 the two administratrices and one Lim Siong and another Sim Chi Min executed the administration bond in favour of the Registrar in the usual Form 9 prescribed under the Probate and Administration Rules 1961. The said Lim Siong and Sim Chi Min are respectively the third and fourth defendants in this originating summons and are the sureties to the administration bond executed by the first and second defendants. The letters of administration to the estate of Lee Peng San (hereinafter referred to as the deceased) were extracted by the first and second defendants on the 23rd day of March, 1965.

Four separate suits were brought against the first two defendants as administratrices after they had extracted the letters of administration. These suits were for damages arising